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Attorneys for Plaintiffs: KIMBERLY MARABLE; MONTE MARABLE

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

KIMBERLY MARABLE; MONTE
MARABLE,

Plaintiffs,

vs.

TOYOTA MOTOR SALES U.S.A.,
INC.; DOES 1 through 100, Inclusive,
Defendants.

Case No.:

COMPLAINT FOR:

1. Breach of Implied Warranty of Merchantability under Song-Beverly Consumer Warranty Act, CA Civil Code § 1790 et seq.
2. Breach of Consumers Legal Remedies Act, CA Civil Code § 1770 et seq.

DEMAND FOR JURY TRIAL

1. Plaintiffs KIMBERLY MARABLE AND MONTE MARABLE (“Plaintiffs”) brings this action against Defendants TOYOTA MOTOR SALES U.S.A., INC. (hereafter “Toyota”) and DOES 1 through 100, inclusive, and seeks a trial by jury against these defendants.

JURISDICTION AND VENUE

2. Diversity of citizenship jurisdiction is shown for the United States District Court for the Central District of California because Toyota is a corporation

1 headquartered in Plano, Texas. Additionally, the amount in controversy exceeds the
2 sum or value of \$75,000, exclusive of interest and other costs, per 28 U.S.C. § 1332.
3 Plaintiff seeks actual damages of \$86,475.57, plus punitive damages according to
4 proof. Further, Plaintiff's reasonably-anticipated statutory attorney's fees under 15
5 U.S.C. § 2310(d)(2)—which as a matter of law are not considered “costs” under of
6 15 U.S.C. § 2310(d)(3)—are likely to exceed \$75,000.

7 3. The United States District Court for the Central District of California may
8 exercise supplemental jurisdiction over Plaintiff's State-law claims pursuant to 28
9 U.S.C. §1367.

10 6. Venue is proper in this District pursuant to 28 U.S.C. §1391. The transactions
11 giving rise to the claim occurred in this Judicial District, specifically a purchase at
12 11041 Sepulveda Blvd., Mission Hills CA 91345. Also, Toyota does substantial
13 business in the State of California and within this Judicial District, is registered to
14 and is doing business within the State of California, and otherwise maintains
15 requisite minimum contacts with the State of California. Also, the property at issue
16 remains within this Judicial District.

17 **GENERAL ALLEGATIONS**

18 7. Plaintiff, at all times relevant a California resident of Sacramento County, on
19 July 13, 2021 purchased a new 2021 Toyota Mirai vehicle manufactured by Toyota,
20 VIN JTDAAAAA8MA001458 (“Vehicle”). The purchase price including financing
21 was \$86,475.57. The Vehicle came with an all-inclusive warranty for the lesser of
22 3-years or 36,000 miles, a “powertrain” warranty for the lesser of 5-years or 60,000
23 miles, and other warranties. Plaintiff's Vehicle was also sold with an implied
24 warranty of merchantability as recognized by Federal law and California law.

25 6. The Vehicle is “hydrogen-powered,” meaning its fuel tank holds liquid
26 hydrogen, which is used to power an electric motor that propels the vehicle. The
27 Vehicle was advertised by Toyota as having “zero-emissions” and a range of 402
28 miles on a single tank of hydrogen.

1 7. For Plaintiff, the 402-mile range was a major selling point for the Vehicle.
2 That meant the Vehicle, unlike many other “zero emissions” vehicles which had
3 much lower ranges, could be driven in a normal fashion. Plaintiff relied on Toyota’s
4 advertising would not have purchased the Vehicle if it, in fact, was not capable of
5 achieving the advertised range in ordinary use. Yet, in the fine print within the prolix
6 sales documents, all of which were “electronically signed” using a tablet presented
7 to Plaintiff during the sales process, Toyota’s dealer provided contrary information
8 about the Vehicle. A document labeled “Mirai Owner’s Manual Supplement”
9 advised that the maximum range was merely 312 miles, rather than over-400 miles.
10 Further, that manual supplement stated that that “As with all vehicles, the
11 components of the Mirai FC will wear with time...” and the Mirai will experience a
12 “normal” reduction of range over time.

13 8. Unfortunately, the Vehicle is not capable of being driven anywhere close to
14 402 miles on a single tank of hydrogen in ordinary use, nor are like models of the
15 Vehicle capable of that, generally. Toyota’s advertising, which continues to the
16 present, was false on that point. Plaintiff since purchase has attempted to maximize
17 the range of the Vehicle by driving conservatively, not using air conditioning, not
18 accelerating quickly, not driving at high speeds, cruising at steady speeds, driving
19 with the windows up, and not carrying heavy loads, but under no circumstances has
20 been able to achieve a range over approximately 250 miles per tank. On information
21 and belief, Plaintiff alleges that the cause of the discrepancy between the advertised
22 range limit and the true range limit is a combination of three factors: (a) the
23 significant degradation of the fuel-cell battery in the Vehicle and in like vehicles,
24 which Toyota knew or should have known was a likely occurrence but did not
25 adequately advise its customers of such, (b) the inability of hydrogen fueling stations
26 to input the volume of hydrogen into the Vehicle and in like vehicles which Toyota
27 assumed would be inputted by customers, which Toyota knew or should have known
28 was a likely occurrence but did not properly advise its customers, and (c) Toyota’s

1 reliance on a stationary dynamometer test operated by Toyota's own agents and/or
2 those of its parent corporation Toyota Motor Corporation and at Toyota's own
3 testing facility California in order to demonstrate the 402-mile range of the Vehicle
4 and like vehicles, which Toyota knew or should have known was unrealistic as
5 compared to real-world driving conditions.

6 9. Plaintiff alleges on information and belief that Toyota knew, by virtue of its
7 own product testing, that its maximum-range figure was grossly inflated. This is not
8 only a significant inconvenience for an average driver like Plaintiff, but places the
9 Vehicle within the advertised range of less expensive "zero-emissions" vehicles
10 which cost half as much. Moreover, because hydrogen-fueling stations are few and
11 far between, a range of only 250 miles is even more of a detriment.

12 10. Toyota also advertised itself, both directly and through its dealer network, as
13 being in a "partnership" with providers of a growing hydrogen-fuel system in
14 California, including a "partnership" with Shell. Toyota's assurances in its
15 advertising, explicit and implied, that it was not only selling a new-technology
16 vehicle, but through its "partnership" was ensuring the availability of fuel for such
17 vehicles, was also a major selling point on which Plaintiff relied.

18 11. Toyota also offered and continues to offer financial incentives such pre-paid
19 "fuel cards" which, so it assured customers both directly and through its dealership
20 network, would allow customers to obtain *years* of pre-paid fuel for the Vehicle
21 using the credits on the "fuel cards." Toyota both directly and through its dealership
22 network assured customers that hydrogen fuel prices were comparable to gasoline
23 prices and would drop as availability of hydrogen fuel increased. Toyota's
24 assurances in this regard were also a major selling point on which Plaintiff relied.

25 12. Yet, Toyota knew or should have known that its assurances in connection with
26 its vaunted "partnership" with hydrogen providers, a supposedly growing hydrogen-
27 provider network, and a "fuel card" having sufficient credits to pay for years of
28 hydrogen fuel, were false. The "partnership" with Shell, on information and belief,

1 did not place Toyota in a position of control over the hydrogen-fuel network. That
 2 network soon collapsed, and Shell in early 2024 announced the permanent closure
 3 of its hydrogen fueling stations. Other fuel networks likewise shut down or
 4 contracted during Plaintiff's use of the Vehicle. The reduction of hydrogen supply
 5 then caused the cost of hydrogen fuel to skyrocket, leading to a substantial
 6 devaluation of the "fuel cards" which originally had induced the sale of the Mirai
 7 vehicles, including to Plaintiff.

8 **FIRST CAUSE OF ACTION**

9 Breach of Implied Warranty of Merchantability under Song-Beverly Consumer

10 Warranty Act, Civil Code Sections 1790 et seq.

11 (By Plaintiff against Toyota and Does 1-50)

12 13. Plaintiff incorporates each allegation set forth in the preceding paragraphs of
 13 this complaint.

14 14. Pursuant to the Song-Beverly Consumer Warranty Act at Civil Code § 1790,
 15 *et seq.*, the Vehicle constitutes "consumer goods" purchased or leased primarily for
 16 family or household purposes. Toyota issued an express warranty relating to future
 17 performance of the Vehicle. Therefore, under California law, Plaintiff at purchase
 18 also received an implied warranty of merchantability.

19 15. Unfortunately, the Vehicle was sold with defects and/or nonconformities
 20 which rendered it unfit for ordinary use, including per Civil Code § 1791.1 that the
 21 Vehicle passes without objection in the trade under its contract description, was fit
 22 for the ordinary purposes for which such goods are used, was adequately packaged
 23 and labeled, and conformed to the promises or affirmations of fact made on its label.

24 16. Plaintiff per Civil Code § 1794(b)(1) rightfully rejects and justifiably revokes
 25 acceptance of the Vehicle and demands rescission and restitution of all monies paid
 26 for the Vehicle (downpayment, monthly payments, finance charges, taxes,
 27 registration, insurance premiums and other incidental and consequential expenses),
 28 plus additional forms of recovery permitted by Commercial Code Sections 2711,

1 2712 and 2713, including inspection and transportation costs, pursuant to Civil Code
2 Section 1794 for implied-warranty violations.

3 **SECOND CAUSE OF ACTION**

4 Breach of Consumers Legal Remedies Act at Civil Code Sections 1770 et seq.

5 (By Plaintiff against Toyota and Does 51 to 100)

6 17. Plaintiff incorporates by reference each and every allegation set forth in the
7 preceding paragraphs of this Complaint.

8 18. The Vehicle constitutes “goods” bought for primarily personal, family, or
9 household purposes per Civil Code §1761(a). Plaintiff is a “consumer” per Civil
10 Code § 1761(d). The advertisement and sale of the Vehicle to Plaintiff are a
11 “transaction” per to Civil Code § 1761(e).

12 19. The defendants violated the Consumers Legal Remedies Act as follows:
13 misrepresenting the source, sponsorship, approval, or certification of goods or
14 services (Civil Code § 1770(a)(2)); representing that goods or services have
15 sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities
16 which they do not have (Civil Code § 1770(a)(5)); representing that goods or
17 services are of a particular standard, quality, or grade, if they are of another (Civil
18 Code § 1770(a)(7)); advertising goods or services with intent not to sell them as
19 advertised (Civil Code § 1770(a)(9)); representing that a transaction confers or
20 involves rights, remedies or obligations which it does not have or involve, or which
21 are prohibited by law (Civil Code § 1770(a)(14)); representing that the subject of a
22 transaction has been supplied in accordance with a previous representation when it
23 has not (Civil Code § 1770(a)(16)).

24 20. The above statutory provisions were violated, and Plaintiff suffered actual
25 damage thereby, due to the defendants’ concealments and misrepresentations as
26 described above. Moreover, Plaintiff would not have acquired the vehicle if the
27 defendants had been forthright in their disclosures. Plaintiff seeks an order
28 prohibiting the defendants from engaging in the acts described above. These

violations of Civil Code § 1770 present a continuing threat to members of the public and will not cease until an injunction is issued by this Court.

WHEREFORE, Plaintiff prays for judgment as follows:

1. For rescission and restitution on the First Causes of Action;
2. An injunctive order on the Second Cause of Action;
3. Incidental and consequential damages on the First Causes of Action;
4. For pre-judgment interest at the maximum legal rate;
5. For statutory attorney's fees and other costs of suit;
6. Any other relief as the Court deems just and proper.

Dated: July 11, 2024

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By: /s/ *David Alan Cooper* _____
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